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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re JOSE M., a Person Coming Under the  
Juvenile Court Law.

B241851  
(Los Angeles County Super. Ct.  
No. CK91401)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.M.,

Defendant and Appellant.

APPEAL from the orders of the Superior Court of Los Angeles County, Veronica McBeth, Judge. (Retired judge of the L.A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

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J.M. (father) appeals from the dispositional orders of April 11, 2012, after the dependency court declared his son a dependent of the court under Welfare and Institutions Code<sup>1</sup> section 300, subdivision (b). Father contends the orders removing his son from his custody, requiring him to participate in drug testing, and requiring his visits to be monitored were an abuse of discretion. We affirm.

## **STATEMENT OF FACTS AND PROCEDURE**

Jose was born to father<sup>2</sup> and M.M. (mother) in 1997. Mother had mental health issues.

When the parents separated in 2000, Jose lived with mother and had inconsistent visits with father. Mother's live-in male companion raised Jose since the child was seven years old.

Father was removed from the United States in 2006 for being a felon in possession of a firearm and thereafter lived in Tijuana, Mexico. Prior to his removal, he committed weapons and drug offenses in Los Angeles and Orange Counties, smoked methamphetamine, and was a long-time member of the Sotel criminal street gang. He displayed numerous gang tattoos on his body.

Jose visited father in Mexico during holidays and summer vacations, except in 2011, when he declined to spend his summer vacation with father. Father did not provide child support to mother after he relocated to Mexico.

Mother's live-in male companion physically and emotionally abused Jose and engaged in violent altercations with mother in Jose's presence. Mother developed drug abuse issues.

Jose used marijuana, failed most of his classes in school, was behind in his academic credits, and was disciplined by his school for behavioral infractions. In

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Father was found to be Jose's presumed father.

October 2011, he was suspended from school for possessing marijuana and a pipe. He was ordered to enroll in a drug program and complete community service.

In November 2011, mother's boyfriend physically abused Jose. The Department of Children and Family Services (Department) provided voluntary services to help stabilize the family and protect Jose. On January 5, 2012, Jose was caught stealing.

On January 6, 2012, Jose was detained from parental custody because voluntary services to protect him proved unsuccessful. Father admitted to using marijuana and methamphetamine in the past. He wanted custody of Jose. The Department initiated arrangements with the Mexican authorities for father to drug test in Mexico, have phone calls with Jose, and visit with Jose at the San Ysidro port of entry. Jose did not want to live with father. Jose wanted to return to the care of his mother, whom he was visiting daily.

On April 11, 2012, Jose was declared a dependent of the court based on sustained allegations under section 300, subdivision (b), concerning mother's male companion's abuse of Jose and mother, mother's failure to protect, and mother's drug abuse and mental health issues. Custody was taken and reunification services were ordered for both parents. Father was ordered to participate in a parenting program and was granted monitored visits. He was ordered to take eight drug tests and, if any test was missed or dirty, complete a drug rehabilitation program "because of his history and [the court wanted] to know in terms of . . . possible placement and visitation." Denying father's request to place Jose with father, the dependency court stated: "the child is an American citizen. He is not a citizen of Mexico. Father is. I would want to know . . . father's circumstances . . . . [¶] I want mother to be able to have a continued relationship with her son, . . . and I am not prepared [to release Jose to father] because I don't know anything about father's circumstances other than some subsequent general comments made by relatives that it would be a safe environment for him and I also don't want to disrupt his relationship with his mother at this time. [¶] . . . [¶] I am prepared to grant father family reunification services . . . . There are things I would like to see father do since he is agreeing to the court's jurisdiction before I would even consider placement."

Moreover, the child protective services agency in Mexico was being asked to assess father's home for placement. "I want . . . the Department . . . to be able to verify all of this information [that father is doing a lot better and raising another child]."

## DISCUSSION

### I. Abuse of Discretion

Father contends the orders removing Jose from his custody, requiring him to participate in drug testing, and requiring his visits to be monitored were an abuse of discretion.<sup>3</sup> We disagree with the contentions.

"The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion. [Citations.] The court's determination in this regard will not be reversed absent a clear abuse of discretion. [Citation.]' [Citation.]" (*In re Corrine W.* (2009) 45 Cal.4th 522, 532.) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' [Citations.]" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) "[W]hen a court has made a custody determination in a dependency proceeding, "a reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].'" [Citations.]" (*Id.* at p. 318.)

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<sup>3</sup> To the extent father contends the dependency court should have considered placing Jose in the home of a relative at the hearing on May 23, 2012, we have no jurisdiction to address the contention, because father did not file a notice of appeal from the orders made at the May 23, 2012 hearing. "[A]ppellate jurisdiction is dependent upon the filing of a timely notice of appeal." (*In re Megan B.* (1991) 235 Cal.App.3d 942, 950.)

Where substantial evidence supports the order, there is no abuse of discretion. (*In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 839.) “It is not our function to weigh the credibility of the witnesses or resolve conflicts in the evidence. [Citation.] Rather we must indulge in all reasonable inferences to support the findings of the juvenile court and must review the record in the light most favorable to the juvenile court’s orders.” (*Ibid.*)

### **A. Order Denying Placement with Father**

The order denying placement of Jose with father was not an abuse of discretion because it was supported by substantial evidence.

Section 361.2, subdivision (a) provides: “When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.”

Under *In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1827-1829, the detriment finding in section 361.2, subdivision (a) must be made by clear and convincing evidence. “[O]n review [of a finding made on clear and convincing evidence], this court only determines whether, viewed in the light most favorable to the judgment, there is substantial evidence to support the findings of the juvenile court.” (*In re Albert B.* (1989) 215 Cal.App.3d 361, 375.)

There is substantial evidence in the record supporting a finding that placement with father would be detrimental to Jose’s safety, protection, or physical or emotional well-being. Since father cannot return to the United States, placing Jose with him would necessitate separating him from mother. Jose, who is 14 and a half years old, expressed clearly he did not want to live with father. He wanted to be reunited in mother’s home. He visited mother frequently. It is reasonable to conclude that placement with father in

Mexico would be detrimental to Jose because it would foreclose the frequent contact he enjoyed with mother, create a high barrier to reunification with her, and be contrary to his wishes. Moreover, at the time father was deported to Mexico in 2006, he was an unsafe parent: he abused drugs, was an active member of a violent criminal street gang, and possessed a loaded weapon in his bedroom. Drug testing in Mexico and a home study by the Mexican authorities were being arranged. The dependency court reasonably concluded the pending assessment of father's current circumstances was required before Jose's safety and welfare in father's custody could be assured. Further, Jose struggled in school and with drugs. Services such as individual counseling and a drug program were being made available to him to help him with his issues and challenges. The purpose of the juvenile court law is to protect and safeguard each child who is under the court's jurisdiction. (§ 202, subd. (a).) Such children "shall receive care, treatment, and guidance consistent with their best interest . . . ." (§ 202, subd. (b).) The court could reasonably conclude that Jose's well-being required the provision of these court-ordered services.

*In re John M.* (2006) 141 Cal.App.4th 1564, 1571, cited by father, which held that the child's "need for services, his lack of a relationship with [his father], and the paucity of information about [the father] do not support the detriment finding," is inapposite. Unlike the facts in *John M.*, placement with father would necessitate living in another country, there was no indication the services Jose needed would be available to him there, he clearly did not want to live with father, and father has a long drug and criminal history and no credible proof of rehabilitation. (Compare *id.* at pp. 1568-1571.)

To the extent father contends the order denying him custody was illegal as a matter of law because there was no sustained allegation against him, father cites no case law or statutory authority to support the contention, and we disagree with the contention. As substantial evidence supports the order, the dependency court did not abuse its discretion in denying father's request for custody.

To the extent section 361.2, subdivision (c)<sup>4</sup> requires the dependency court to state on the record that the detriment finding was made by clear and convincing evidence, we conclude the court's failure to do so in this case is harmless, since substantial evidence amply supports the finding and there is no reasonable likelihood of a different result if reversal were ordered.

## **B. Drug Testing**

A reunification plan may require a parent to remedy deficiencies that were not reflected in a sustained allegation if those deficiencies would reasonably "impede the parent's ability to reunify with his child." (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008, cited with approval by *In re Nolan S.* (2009) 45 Cal.4th 1217, 1228-1229.)

Father was not ordered to complete a drug program. He was ordered to submit to testing only to determine whether he was still abusing drugs. Only if he failed to test clean would he be required to complete a rehabilitation program. The evidence of his history of abusing drugs and engaging in drug-related criminal activity was a rational basis for ordering the testing. The dependency court reasonably inferred that the absence in the record of evidence of continued drug abuse during the period subsequent to his removal from the United States, and general comments by relatives who did not live with him, did not indicate he was drug-free. Testing would resolve the matter. Current drug abuse would impede his ability to reunify with Jose. Accordingly, the order was well within the court's broad discretion to fashion orders to best serve and protect the child. (Compare *In re Basilio T.* (1992) 4 Cal.4th 155, 160-162, 172-173 [the substance abuse component of the dispositional order was an abuse of discretion where there was no evidence of past or present drug use or of drug-related criminal activity].)

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<sup>4</sup> Section 361.2, subdivision (c) provides, "The court shall make a finding either in writing or on the record of the basis for its determination under subdivisions (a) and (b)."

### **C. Monitored Visits**

“Courts have long held that in matters concerning . . . visitation trial courts are vested with broad discretion. On appeal the exercise of that discretion will not be reversed unless the record clearly shows it was abused.” (*In re Megan B.*, *supra*, 235 Cal.App.3d at p. 953.) In exercising discretion, the court “balanc[es] the rights of the parent with the best interests of the child.” (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1284.) Given father’s drug use, gang membership, criminal history, weapons possession, and no credible evidence father substantially changed his lifestyle, it was not an abuse of discretion to conclude Jose’s safety and welfare required that visits with father be monitored.

### **DISPOSITION**

The orders are affirmed.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.